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<PREAMB>

<AGENCY TYPE='S'>DEPARTMENT OF THE INTERIOR

<SUBAGY>National Indian Gaming Commission

<CFR>25 CFR Parts 581, 584, and 585

<SUBJECT>Appeal Proceedings Before the Commission

AGENCY: National Indian Gaming Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) proposes to revise its appeals rules to include, amongst the appealable actions, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards.

DATES: The agency must receive comments on or before February 6, 2013.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to:* reg.review@nigc.gov.
- *Mail comments to:* Armando Acosta, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW, Suite 9100, Washington, DC 20005.
- *Fax comments to:* Armando Acosta, National Indian Gaming Commission, at (202) 632-0045.

FOR FURTHER INFORMATION CONTACT: Armando Acosta, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005. Email: armando_acosta@nigc.gov; telephone: (202) 632-7003.

SUPPLEMENTARY INFORMATION:

<HD1>I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposed rules.

<HD1>II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the Commission and set out a comprehensive framework for the regulation of gaming on Indian lands. The Act requires that the Commission, by regulation, provide an opportunity for an appeal and a hearing before the Commission on fines levied by the Chair against the tribal operator of an Indian game or a management contractor, and to determine whether a temporary closure order issued by the Chair should be made permanent or dissolved. 25 U.S.C. 2713(a)(2), 2713(b). By regulation, the Commission has also provided rights to tribes and/or management contractors to appeal ordinance disapprovals, management contract approvals or disapprovals, enforcement actions, and actions to void an approved management contract. The appellate procedures for these actions are all consolidated in this subchapter.

On September 21, 2012, the Commission published two final rules amending 25 CFR parts 543 and 547. In its final rule for part 543, the Commission provided tribal gaming regulatory authorities (TGRA) with rights to appeal the Chair's decisions to approve or object to a TGRA's adoption of alternate standards from those required by the Commission's minimum internal control standards contained in part 543 (77 FR 58708, Sept. 21, 2012). In its final rule for part 547, the Commission provided TGRAs with rights to appeal the Chair's decisions to approve or object to a TGRA's adoption of alternate standards from those required by the Commission's technical standards contained in part 547 (77 FR 58473, Sept. 21, 2012).

<HD1>III. Development of the Proposed Rule

On September 25, 2012, the Commission published a final rule consolidating all appeal proceedings before the Commission into the current subchapter H (Appeal Proceedings Before the Commission). 77 FR 58941, Sept. 25, 2012. However, the new appeal rights provided under parts 543 and 547 were not included in the current subchapter H. Thus, subchapter H must be revised to include the new appeal rights provided to TGRAs under parts 543 and 547.

<HD1>Regulatory Matters

<HD2>Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

<HD2>Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

<HD2>Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

<HD2>Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

<HD2>Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

<HD2>National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

<HD2>Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., and is therefore not subject to review by the Office of Management and Budget.

<HD1>Text of the Proposed Rules

For the reasons discussed in the Preamble, the Commission proposes to amend its regulations in 25 CFR chapter III, subchapter H as follows:

<SUBCHAPT><HED>Subchapter H—Appeal Proceedings Before the Commission

<PART><HED>PART 581—MOTIONS IN APPEAL PROCEEDINGS BEFORE THE COMMISSION

1. The authority citation for part 581 continues to read as follows:

<AUTH><HED>Authority:<P> 25 U.S.C. 2706, 2713, 2715.

2. In § 581.1, the introductory text of paragraph (a) is republished and paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 581.1 What is the scope of this part?

(a) This part governs motion practice under:

* * * * *

(3) Part 584 of this subchapter relating to appeals before a presiding official of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required

by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments; and

(4) Part 585 of this subchapter relating to appeals to the Commission on written submissions of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments.

* * * * *

3. Revise § 581.4 to read as follows:

§ 581.4 How do I file a motion before a presiding official?

Motion practice before a presiding official on appeals of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, the Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments is governed by § 584.4 of this subchapter.

**<PART><HED>PART 584—APPEALS BEFORE A PRESIDING OFFICIAL OF
NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS,
ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID**

OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A CERTIFICATE OF SELF-REGULATION, THE CHAIR'S DECISIONS TO APPROVE OR OBJECT TO THE ADOPTION OF ALTERNATE STANDARDS FROM THOSE REQUIRED BY THE COMMISSION'S MINIMUM INTERNAL CONTROL STANDARDS AND/OR TECHNICAL STANDARDS, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS

4. The authority citation for part 584 continues to read as follows:

<AUTH><HED>**Authority:**<P>25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

5. Revise the part heading to part 584 to read as set forth above.

6. In § 584.1, the introductory text of paragraph (a) is republished. Redesignate paragraph (a)(6) as paragraph (a)(8) and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 584.1 What does this part cover?

(a) This part applies to appeals of the following where the appellant elects a hearing before a presiding official:

* * * * *

(6) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards under part 543 of this chapter;

(7) The Chair's decisions to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's technical standards under part 547 of this chapter; and

* * * * *

7. Amend § 584.2 to add new paragraph (c) to read as follows:

§ 584.2 Who may appeal?

* * * * *

(c) Appeals of the Chair's decisions to approve or object to the adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards may only be brought by the tribal gaming regulatory authority that approved the alternate standards for the gaming operation(s).

8. Revise the section heading to § 584.3 to read as follows:

§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self-regulation, the Chair's decision to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and a notice of late fees and late fee assessments?

* * * * *

<PART><HED>PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A CERTIFICATE OF SELF-REGULATION, THE CHAIR'S DECISIONS TO APPROVE OR OBJECT TO THE ADOPTION OF ALTERNATE STANDARDS FROM THOSE REQUIRED

**BY THE COMMISSION’S MINIMUM INTERNAL CONTROL STANDARDS
AND/OR TECHNICAL STANDARDS, AND NOTICES OF LATE FEES AND
LATE FEE ASSESSMENTS**

9. The authority citation for part 585 continues to read as follows:

<AUTH><HED>Authority: <P>25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

10. Revise the part heading to part 585 to read as set forth above.

11. In § 585.1, the introductory text of paragraph (a) is republished. Redesignate paragraph (a)(6) as paragraph (a)(8) and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 585.1 What does this part cover?

(a) This part applies to appeals of the following where the appellant does not elect a hearing before a presiding official and instead elects to have the matter decided by the Commission solely on the basis of the written submissions:

* * * * *

(6) The Chair’s decisions to approve or object to a tribal gaming regulatory authority’s adoption of alternate standards from those required by the Commission’s minimum internal control standards under part 543 of this chapter;

(7) The Chair’s decisions to approve or object to a tribal gaming regulatory authority’s adoption of alternate standards from those required by the Commission’s technical standards under part 547 of this chapter; and

* * * * *

12. Amend § 585.2 to add new paragraph (c) to read as follows:

§ 585.2 Who may appeal?

* * * * *

(c) Appeals of the Chair's decisions to approve or object to the adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards may only be brought by the tribal gaming regulatory authority that approved the alternate standards for the gaming operation(s).

13. Revise the section heading to § 585.3 to read as follows:

§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self regulation, the Chair's decision to approve or object to a tribal gaming regulatory authority's adoption of alternate standards from those required by the Commission's minimum internal control standards and/or technical standards, and notices of late fees and late fee assessments?

* * * * *

<SIG><DATED>Dated: January _14____, 2013.

<NAME>**Tracie L. Stevens,**
<TITLE>Chairwoman.

<NAME>**Daniel J. Little,**
<TITLE>Associate Commissioner.</SIG>

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